

PHILLIP A. TALBERT
United States Attorney
LAURA JEAN BERGER
Assistant United States Attorney
2500 Tulare Street, Suite 4401
Fresno, CA 93721
Telephone: (559) 497-4000
Facsimile: (559) 497-4099

Attorneys for Plaintiff
United States of America

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

ADRIAN PEREZ,

Defendant.

CASE NO. 1:20-CR-00133-NONE-SKO

STIPULATION REGARDING EXCLUDABLE
TIME PERIODS UNDER SPEEDY TRIAL ACT;
ORDER

DATE: February 11, 2022
TIME: 9:00 a.m.
COURT: Hon. Jennifer L. Thurston

BACKGROUND

This case is set for a change of plea on February 11, 2022. On May 13, 2020, this Court issued General Order 618, which suspends all jury trials in the Eastern District of California “until further notice.” Under General Order 618, a judge “may exercise his or her authority to continue matters, excluding time under the Speedy Trial Act with reference to the court’s prior General Order 611 issued on March 17, 2020 . . . with additional findings to support the exclusion in the Judge’s discretion.” General Order 618, ¶ 6 (E.D. Cal. May 13, 2020). In addition, any judge “may order case-by-case exceptions” to General Order 618’s provisions “at the discretion of that Judge or upon the request of counsel, after consultation with counsel and the Clerk of the Court to the extent such an order will impact court staff and operations.” General Order 618, ¶ 7 (E.D. Cal. May 13, 2020). This and previous General Orders were entered to address public health concerns related to COVID-19.

Although the General Orders address the district-wide health concern, the Supreme Court has

1 emphasized that the Speedy Trial Act’s end-of-justice provision “counteract[s] substantive
 2 openendedness with procedural strictness,” “demand[ing] on-the-record findings” in a particular case.
 3 *Zedner v. United States*, 547 U.S. 489, 509 (2006). “[W]ithout on-the-record findings, there can be no
 4 exclusion under” § 3161(h)(7)(A). *Id.* at 507. Moreover, any such failure cannot be harmless. *Id.* at
 5 509; *see also United States v. Ramirez-Cortez*, 213 F.3d 1149, 1153 (9th Cir. 2000) (explaining that a
 6 judge ordering an ends-of-justice continuance must set forth explicit findings on the record “either orally
 7 or in writing”).

8 Based on the plain text of the Speedy Trial Act—which *Zedner* emphasizes as both mandatory
 9 and inexcusable—General Orders 611, 612, 617, and 618 require specific supplementation. Ends-of-
 10 justice continuances are excludable only if “the judge granted such continuance on the basis of his
 11 findings that the ends of justice served by taking such action outweigh the best interest of the public and
 12 the defendant in a speedy trial.” 18 U.S.C. § 3161(h)(7)(A). Moreover, no such period is excludable
 13 unless “the court sets forth, in the record of the case, either orally or in writing, its reason or finding that
 14 the ends of justice served by the granting of such continuance outweigh the best interests of the public
 15 and the defendant in a speedy trial.” *Id.*

16 The General Orders exclude delay in the “ends of justice.” 18 U.S.C. § 3161(h)(7) (Local Code
 17 T4). Although the Speedy Trial Act does not directly address continuances stemming from pandemics,
 18 natural disasters, or other emergencies, this Court has discretion to order a continuance in such
 19 circumstances. For example, the Ninth Circuit affirmed a two-week ends-of-justice continuance
 20 following Mt. St. Helens’ eruption. *Furlow v. United States*, 644 F.2d 764 (9th Cir. 1981). The court
 21 recognized that the eruption created “appreciable difficulty” for the trial to proceed. *Id.* at 767-69; *see*
 22 *also United States v. Correa*, 182 F. Supp. 326, 329 (S.D.N.Y. 2001) (citing *Furlow* to exclude time
 23 following the September 11, 2001 terrorist attacks and the resultant public emergency).

24 The coronavirus poses a similar, albeit more enduring, “appreciable difficulty” to the prompt
 25 proceedings mandated by the statutory rules. Recently, the Ninth Circuit enumerated a “non-
 26 exhaustive” list of seven factors it found to be “relevant” in considering ends-of-justice Speedy Trial Act
 27 continuances “in the context of the COVID-19 pandemic.” *United States v. Olsen*, --- F.3d ---, 2021 WL
 28 1589359 at *7 (9th Cir. Apr. 23, 2021). That non-exhaustive list includes: (1) whether a defendant is

1 detained pending trial; (2) how long a defendant has been detained; (3) whether a defendant has invoked
2 speedy trial rights since the case's inception; (4) whether a defendant, if detained, belongs to a
3 population that is particularly susceptible to complications if infected with the virus; (5) the seriousness
4 of the charges a defendant faces, and in particular whether the defendant is accused of violent crimes;
5 (6) whether there is a reason to suspect recidivism if the charges against the defendant are dismissed;
6 and (7) whether the district court has the ability to safely conduct a trial. *Id.*

7 In light of the foregoing, this Court should consider the following case-specific facts in finding
8 excludable delay appropriate in this particular case under the ends-of-justice exception, § 3161(h)(7)
9 (Local Code T4). If continued, this Court should designate a new date for the status conference. *United*
10 *States v. Lewis*, 611 F.3d 1172, 1176 (9th Cir. 2010) (noting any pretrial continuance must be
11 "specifically limited in time").

12 STIPULATION

13 Plaintiff United States of America, by and through its counsel of record, and defendant, by and
14 through defendant's counsel of record, hereby stipulate as follows:

- 15 1. By previous order, this matter was set for a change of plea hearing on February 11, 2022.
- 16 2. By this stipulation, defendant now moves to continue the change of plea hearing until
17 March 11, 2022, and to exclude time between February 11, 2022, and March 11, 2022, under 18 U.S.C.
18 § 3161(h)(7)(A), B(iv) [Local Code T4].
- 19 3. Defendant has reached a plea agreement with the government, which will be filed in this
20 case. Defendant seeks a continuance for additional defense preparation and investigation.
- 21 4. If, however, defendant ultimately does not enter his guilty plea and decides to proceed to
22 trial, the parties agree and stipulate, and request that the Court find the following:
 - 23 a) The government has represented that the discovery associated with this case
24 includes investigative reports and lengthy audio and video footage. All of this discovery has
25 been either produced directly to counsel and/or made available for inspection and copying.
 - 26 b) Counsel for defendant desires additional time to conduct further investigation into
27 the case and its resolution. Counsel for the government and counsel for defendant reasonably
28 believe that the case will resolve pursuant to a plea on March 11, 2022.

1 c) Counsel for defendant has various conflicts in other cases between now and the
2 proposed March 11, 2022 hearing that would not reasonably permit her to try this case any time
3 between now and at least March 11, 2022.

4 d) Additionally, counsel for defendant recently became ill with the COVID-19 virus
5 and only days prior to the signing of this stipulation recovered from the COVID-19 virus that
6 impaired her ability to meet with the defendant prior to the previously-set change of plea hearing
7 calendared for February 11, 2022.

8 e) Counsel for defendant believes that failure to grant the above-requested
9 continuance would deny her the reasonable time necessary for effective preparation, taking into
10 account the exercise of due diligence, and in any event if the case does not resolve pursuant to
11 the plea as anticipated, counsel for defendant believes that the lack of a continuance would deny
12 her the reasonable time necessary for effective preparation in the event of a trial.

13 f) The government does not object to the continuance.

14 g) Based on the above-stated findings, the ends of justice served by continuing the
15 case as requested outweigh the interest of the public and the defendant in a trial within the
16 original date prescribed by the Speedy Trial Act.

17 h) For the purpose of computing time under the Speedy Trial Act, 18 U.S.C. § 3161,
18 et seq., within which trial must commence, the time period of February 11, 2022 to March 11,
19 2022, inclusive, is deemed excludable pursuant to 18 U.S.C. § 3161(h)(7)(A), B(iv) [Local Code
20 T4] because it results from a continuance granted by the Court at defendant's request on the basis
21 of the Court's finding that the ends of justice served by taking such action outweigh the best
22 interest of the public and the defendant in a speedy trial.

23 5. Nothing in this stipulation and order shall preclude a finding that other provisions of the
24 Speedy Trial Act dictate that additional time periods are excludable from the period within which a trial
25 must commence.

26 IT IS SO STIPULATED.
27
28

1 Dated: February 9, 2022

PHILLIP A. TALBERT
United States Attorney

2
3 /s/ LAURA JEAN BERGER
LAURA JEAN BERGER
Assistant United States Attorney

5 Dated: February 9, 2022

6 /s/ ALEKXIA TORRES
STALLINGS
ALEKXIA TORRES
STALLINGS
Counsel for Defendant
ADRIAN PEREZ

12 **ORDER**

13 IT IS SO FOUND.

14
15 IT IS SO ORDERED.

16 Dated: **February 9, 2022**

17 
UNITED STATES DISTRICT JUDGE